Waters Licenses, Warranties, and Support Services

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Waters

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The term "Waters" shall mean Waters Corporation and/or a Related Company of Waters Corporation. A Related Company of Waters Corporation means any corporation or other business entity that is directly controlled by Waters Corporation. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other voting interest, or income of a corporation or other business entity.

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Other registered trademarks or trademarks are the sole property of their owners.

Contacting Waters

Contact Waters® with technical questions regarding the use, transportation, removal, or disposal of any Waters product. You can reach us via the Internet, telephone, or conventional mail.

Waters contact information:

Contacting medium	Information
Internet	The Waters Web site includes contact information for Waters locations worldwide. Visit www.waters.com.
Telephone and fax	From the USA or Canada, phone 800 252-HPLC, or fax 508 872 1990. For other locations worldwide, phone and fax numbers appear in the Waters Web site.
Conventional mail	Waters Corporation 34 Maple Street Milford, MA 01757 USA

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License, Warranty, Support, Shipment, Damage, Claim, and Return Information

Software license and warranty

All use of the Waters Software shall be governed by the terms and conditions of the Waters Software License Agreement, attached hereto as Appendix A.

The term "Software" includes the object code version of the MassLynx software, Breeze software, Empower software, Waters NuGenesis Scientific Data Management System (SDMS) software, Waters SDMS Vision Publisher software, Waters Analytical Workflow Manager (AWM) software, Waters UNIFI software and/or such other software licensed to you by Waters. The Software is comprised of the computer programs, media containing the computer programs (including Oracle® Network Embedded Software, where applicable), user documentation, and any upgrades that Waters may provide to you.

Instrumentation and service warranty

Limited warranty: instrumentation

Waters warrants from the date of shipment for the applicable warranty period that its instrumentation identified and/or marketed as Waters products shall be free from defects in design, material, and workmanship and shall conform to and perform materially in accordance with the specifications set forth in the applicable operator or user manual when used in the proper operating environment under normal use and service. This warranty covers all new instrumentation products manufactured by Waters. Any warranty that may be applicable to third-party instrumentation products and accessories shall be provided by the respective manufacturers or suppliers of such third-party components.

Waters instruments are for use only by properly qualified personnel. Waters instruments labeled and identified as *in vitro* diagnostic ("IVD") devices may

be used for IVD purposes. Such IVD uses must be in accordance with the instrument's intended use statement provided in the product literature. Any patient diagnosis or treatment determination made as a result of data generated using a Waters IVD instrument must be made by a qualified health care professional. Waters instruments that are not labeled and identified as IVDs are general laboratory instruments intended for research use only and are not for use in IVD procedures. Customer shall not use any such general laboratory instruments for IVD purposes.

This instrumentation limited warranty is subject to the conditions set forth below.

Exclusions

The foregoing limited warranty does not apply to any material deviation from the specifications by any instrumentation product that results from (a) use of the instrumentation for any purpose other than general purpose use unless specifically expressed otherwise in the product literature; (b) use of the instrumentation products for investigational use with or without confirmation of diagnosis by another, medically established diagnostic product or procedure; (c) errors or defects in any third-party component; (d) modification of the instrumentation products by anyone other than Waters; (e) failure by customer to install any standard enhancement or update in accordance with an update procedure or release of firmware or any operating system release; (f) any willful or negligent action or omission of customer; (g) any misuse, or incorrect use, of the instrumentation product; (h) any malfunction of any information system or instrument with which the instrumentation product may be connected; or (i) failure to establish or maintain the operating environment for the instrumentation product in accordance with the applicable operator or user manual.

Exclusive remedy

In the event of any failure of a Waters' instrumentation product to perform in accordance with the foregoing limited warranty, Waters' sole liability and customer's sole and exclusive remedy, shall at Waters' sole discretion be the repair or replacement of the instrumentation product or refund of amounts paid by customer for the instrumentation product that does not meet the limited warranty.

Warranty service

Warranty service is performed at no charge and at Waters' option and in Waters' sole discretion in one of four ways:

- With your authorization, a service representative will access your system remotely.
- A service representative is dispatched to the customer facility.
- The instrumentation product is returned for repair at a Waters facility.
- Replacement parts with appropriate installation instructions are sent to the customer.

Warranty service is performed only if the customer notifies Waters during the applicable warranty period.

Unless otherwise agreed in writing at the time of sale, if the instrumentation product for which warranty service is sought has been removed from the initial installation geographic site, no warranty service will be provided.

Warranty service is provided during normal business hours (8:00 A.M. to 5:00 P.M., Monday through Friday). Service is not available when Waters offices are closed in observance of legal holidays.

Warranty service exceptions for instrumentation

Warranty service is not performed on

- any instrumentation product or part that has been repaired by others, improperly installed, altered, or damaged in any way.
- any instrumentation product or parts not manufactured by Waters.
- any instrumentation product that malfunctions because the customer has failed to perform maintenance, calibration checks, or observe good operating procedures.
- any instrumentation product that malfunctions due to the use of unapproved maintenance, or repair parts, or operating supplies and computers not meeting minimum hardware requirements, or as a result of network-related problems.

Repair or replacement is not made

- for expendable items such as filament devices, panel lights, fuses, batteries, filters, seals, and other items contained in a Performance Maintenance Kit, when such items were operable at the time of initial use.

- because of decomposition due to chemical action.
- because of poor facilities, operating conditions, or inadequate utilities.

Limited warranty: repair and maintenance service

Waters warrants repairs and maintenance services for a period of ninety (90) days from the date of delivery of such services. Waters also warrants the parts used shall be free from defects in design, material and workmanship and shall conform to and perform materially in accordance with the specifications set forth in the applicable operator or user manual when used in the proper operating environment under normal use and service.

Repair and maintenance warranty service is not provided for

- any instrument, maintenance or repair part that has been repaired by others, improperly installed, altered, or damaged in any way.
- any instrumentation product that malfunctions because the customer has failed to perform maintenance, calibration checks, or observe good operating procedures.
- any instrumentation product that malfunctions due to the use of unapproved maintenance or repair parts or operating supplies and computers not meeting minimum hardware requirements or as a result of network related problems.
- any system component or assembly that falls outside the scope of the repair or maintenance service that fails either during or within ninety (90) days of the service event.

Repair or replacement is not made

- because of decomposition due to chemical action.
- because of poor facilities, operating conditions, or inadequate utilities.

Warranty disclaimers

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE PRODUCTS FOR A PARTICULAR PURPOSE, INCLUDING FITNESS FOR USE IN CLINICAL DIAGNOSTIC PROCEDURES OR FOR INVESTIGATIONAL USE WITH OR WITHOUT CONFIRMATION OF DIAGNOSIS BY ANOTHER MEDICALLY ESTABLISHED DIAGNOSTIC PRODUCT OR PROCEDURE, OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR COURSE OF PERFORMANCE. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF THE PRODUCTS AND THEIR MANUFACTURE, WATERS CANNOT AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE WITHOUT INTERRUPTION OR ERROR-FREE OR WITHOUT DEFECT. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT CUSTOMER IS SOLELY RESPONSIBLE FOR USE OF THE PRODUCTS IN CLINCIAL DIAGNOSTIC PROCEDURES OR FOR INVESTIGATIONAL USE WITH OR WITHOUT CONFIRMATION OF DIAGNOSIS BY ANOTHER MEDICALLY ESTABLISHED DIAGNOSTIC PRODUCT OR PROCEDURE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WATERS OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS INFORMATION OR PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF WATERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WATERS' TOTAL LIABILITY IN ANY EVENT SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS AND SERVICES TO WHICH THE DAMAGES RELATE AND, THE PARTIES AGREE THAT SUCH LIMITED LIABILITY IS A REASONABLE ALLOCATION OF THE RISKS INVOLVING THE PRODUCT.

Transfer of warranty

The warranty is not transferable from the original owner or original installation site to another geographic location without the written consent of Waters. In the event that the instrument(s) must be relocated within the same company and country during the warranty period, Waters offers relocation services to ensure proper care is taken when de-installing, packing and re-installing in order to maintain the warranty coverage.

Warranty periods

Note that warranty periods begin when products are shipped.

Instrumentation:

Warranted item	Component or components	Warranty period
Electronic and mechanical assemblies	Entire instrument, except for maintenance parts, operating supplies, and expendable components.	One year (12 months) from the date of shipment, unless otherwise stated in the instrument's accompanying user documentation as in the case of the Waters 2695 Separations Module, whose documentation specifies that a two-year warranty applies to the instrument's sample manager and solvent manager drive mechanism. For instruments that have served as demonstration models, the warranty period is 90 days.
Normal wear and maintenance parts	As defined in the instrument Performance Maintenance Kit, if available.	Ninety (90) days from date of shipment.
Operating supplies and expendables	Autosampler vials, solvent and sample filters, and fuses.	Warranted to function properly when delivered.

Service:

Warranted item	Component or components	Warranty period
Parts installed during a demand service repair	Mechanical and electronic assemblies	Ninety (90) days from date of shipment.
Service labor	Service workmanship	Ninety (90) days from date of service delivery.

Warranty returns

No returns may be made without prior notification of, and authorization from, Waters. If it is necessary to return products to Waters, contact Waters Customer Service, the Waters subsidiary nearest you, or your Waters representative for a return merchandise authorization (RMA) number and forwarding address.

Extended and enhanced warranty coverage is available for instrumentation and software products under the applicable service and support plan. Contact your local Waters office for more information.

Warranty: non-Waters hardware

Waters does not assemble, configure, or install software on any computer or computer peripheral that has not been purchased from Waters.

The warranty for hardware not manufactured by Waters follows the warranty, if any, of the original equipment manufacturer.

Support and extended coverage

Waters' USA and Canadian customers seeking service and support may contact Waters Technical Service (800 252-4752). Others may phone their local Waters subsidiary or Waters corporate headquarters in Milford, Massachusetts (USA), or they may visit the Waters Web site (http://www.waters.com) and click Support.

Extended support and coverage are available through a Total Assurance Warranty (TAW), or a Total Assurance Plan (TAP).

Total Assurance Warranty is available during the first 90 days of system ownership and receives system discount. It provides full support coverage for two years and guarantees a scheduled Performance Maintenance (PM) Visit in year two.

Total Assurance Plan is available at the end of the Warranty and is renewable annually, it also provides annual scheduled PM visit.

Both TAW, and TAP provide technical telephone support ,priority service, repair visits and replacement parts as needed to ensure your system is running at peak performance.

Installation and extended training

Instrument startup

As part of the purchased installation charge, Waters offers familiarization traning for a single, designated primary operator.

Instrument startup consists of these procedures:

- Assembling computer hardware and connecting the printer.
- Connecting computer hardware to the system instruments.
- Configuring and testing a system for proper instrument function and data collection.

Optional installation services are available to purchasers of workstation add-on kit software products. The services consist of software installation, system configuration, and primary operator familiarization training. During this day of system installation service, a certified Waters field service technician will configure the customer's computer, load software, and interface the computer with the system.

Extended training

Waters Educational Services provides instrument and software training beyond that which is provided at startup. Courses are available at the customer site, our worldwide campus in Milford, Mass., U.S.A., in our Regional Training Centers in Europe and Asia, and at most Waters subsidiaries. Programs can be generic or customized to address specific challenges.

For details about the training and extended support programs, Waters' USA, and Canadian customers may contact Waters Technical Service (800 252-4752). Others may phone their local Waters subsidiary or Waters corporate headquarters in Milford, Massachusetts (USA), or they may visit the Waters Web site (http://www.waters.com), and click Education, or Services & Support.

Shipments, damages, claims, and returns

All shipments are made free on board (FOB) shipping point. Waters suggests that you authorize insurance for all shipments. Instruments and major components are packed and shipped via ground transportation unless otherwise required. Supplies and/or replacement parts are packed and shipped via a ground courier, air parcel post, or parcel post, unless otherwise requested.

Damages

The U.S. Interstate Commerce Commission (ICC) has determined that carriers are as responsible for concealed damages that occur during transit as they are for obvious damages. Concealed damage is damage that occurs to the contents of a shipping package where the package exterior remains apparently undamaged. Therefore, unpack the instrument or component promptly after receiving it, aware that it may have sustained concealed damage while in transit.

Claims

If you discover the item shipped has sustained concealed damage, do not continue to unpack it. Instead, request the local agent or carrier to immediately inspect the unit, and secure a written (inspection) report of his or her findings to support the claim. You must make this request within 15 days

of receiving the damaged unit, otherwise, the carrier will not honor the claim. Do not return damaged goods to Waters without first securing the inspection report and contacting Waters for a return merchandise authorization (RMA) number.

Ensure the shipment is protected and secure after you receive it. Components removed from the shipment, or damaged while awaiting installation, are the responsibility of the customer.

After a damage inspection report is secured, Waters cooperates fully in supplying replacements and handling a claim, which either party may initiate.

Returns

No returns may be made without prior notification and authorization, If for any reason it is necessary to return material to Waters, contact Waters Customer Service, the Waters subsidiary nearest you, or your local Waters representative for a return merchandise authorization (RMA) number and forwarding address.

A Waters Software License Agreement

This is a legal agreement ("Agreement") between you (the "Customer") and Waters Corporation and/or a Related Company of Waters Corporation (collectively, "Waters"). A Related Company of Waters Corporation means any corporation or other business entity that is directly controlled by Waters Corporation. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other voting interest, or income of a corporation or other business entity.

By using Waters' Software including any Upgrades (as defined below), you represent that you have the power and authority to enter into this Agreement on behalf of your company. In such event, “you” refers to your company. YOU MUST READ AND AGREE TO THE TERMS OF THIS AGREEMENT BEFORE ANY WATERS' SOFTWARE CAN BE INSTALLED OR USED. BY CLICKING ON THE “ACCEPT” BUTTON OF THIS AGREEMENT, OR BY INSTALLING OR USING WATERS' SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU SHOULD EXIT THIS PAGE AND NOT INSTALL OR USE ANY WATERS' SOFTWARE. BY DOING SO YOU FOREGO ANY IMPLIED OR STATED RIGHTS TO INSTALL OR USE WATERS' SOFTWARE, AND YOU SHALL RETURN IT TO US FOR A FULL REFUND (IF APPLICABLE).

All use of Waters' Software shall be governed by the following terms and conditions.

1. **Definitions**.

    a. The term “Software” includes the object code version of the MassLynx software, Breeze software, Empower software, Waters NuGenesis Scientific Data Management System (SDMS) software, Waters SDMS Vision Publisher software, Waters Analytical Workflow Manager (AWM) software, Waters UNIFI software and/or such other software indicated on the Waters' Quotation and accepted by you on your Purchase Order ("PO") and licensed to you by Waters. The Software is comprised of the computer programs, media containing the computer programs (including Oracle®

Network Embedded Software, where applicable), user documentation, and any Upgrades that Waters may provide to you. You acknowledge and agree that the Software constitutes Waters' confidential information.

b. “Upgrades" shall mean and include any changes, additions, or corrections made by Waters to the Software.

c. “Quotation” shall mean a document provided by an authorized representative of Waters which describes the Software, Waters' products, and/or those certain Waters Partners' product(s), if any, that you, the Customer, may purchase, including pricing. All such Quotations shall include and be subject to the terms and conditions contained in this Agreement unless otherwise agreed in writing.

d. “Purchase Order” shall mean a written authorization from you, the Customer, to Waters for the purchase of Software and products. All such Purchase Orders shall reference a Quotation and be subject to the terms and conditions contained in this Agreement.

2. License and Usage of Software

Subject to the terms and conditions of this Agreement and upon payment of the applicable license fees, Waters hereby grants to you a non-exclusive, non-transferable, non-sublicenseable right and license during the Term (as defined below) to use the Software in connection with Waters' products and/or those certain Waters' Partner product(s) authorized by Waters, if any. In this regard, you may install, copy, operate and transmit the Software in whole or in part: (i) for single-seat licenses, only as necessary to use the Software either on a single personal computer or workstation, and (ii) for client/server licenses, in a reasonable manner to ensure that the number of users does not exceed the number of users for which you have paid license fees. The Software is protected by the copyright laws of the United States and international treaties. A "Waters' Partner" is an entity with which Waters has a business alliance.

3. Ownership of the Software.

The Software is licensed to you, not sold. Subject to the rights granted above, Waters and the manufacturers of any third-party software included within the Software retain all right, title and interest in and to the Software. You acknowledge that the Software is licensed in object code for use solely in conjunction with Waters' products. Use of the Software in conjunction with non-Waters products, other than those certain Waters' Partner product(s) authorized by Waters, if any, is not licensed hereunder and is prohibited.

4. General Usage Restrictions.

a. You may not use the Software for any purpose beyond the scope of the license granted in this Agreement.

b. Without limiting the generality of the foregoing, you will not: (i) authorize or permit use of the Software by persons not authorized to do so; (ii) market or distribute the Software; (iii) assign, sublicense, sell, lease or otherwise transfer, convey or pledge as security or otherwise encumber, your rights under the license granted in Section 2 above; (iv) use the Software in any time-sharing,

subscription, rental or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify the Software; (vi) combine or integrate the Software with hardware, software or technology not provided to you by Waters; (vii) decompile, disassemble, reverse engineer (unless required by law for interoperability) or otherwise attempt to obtain or perceive the source code from which any component of the Software is compiled or interpreted, and you hereby acknowledge that nothing in this Agreement shall be construed to grant you any right to obtain or use such source code; (viii) disclose the results of any benchmark tests run on the Software (whether or not the results were obtained with assistance from Waters) to any party; or (ix) make copies of the Software other than a reasonable number of copies solely for archival purposes, provided that you reproduce and include Waters' and any third party manufacturer's copyright notices on any backup, disaster recovery or archival copies of the Software and on copies of any user documentation. It is understood and agreed that you may temporarily move, install and operate the Software at a

different computer or workstation in the event of computer or workstation malfunction.

c. The Software is not for use by individuals other than properly qualified personnel. Generally, the Software is not intended for use in *in vitro* diagnostic ("IVD") procedures, but is general laboratory software intended for research use only. Customer shall not use any such general laboratory software for IVD purposes. Notwithstanding the foregoing, certain Software may be labeled and identified as an IVD device ("IVD Software") and as such may be used for IVD purposes. Customer shall not use such IVD Software except in accordance with the IVD Software's intended use statement provided in the product literature. Any patient diagnosis or treatment determination made as a result of data generated using the IVD Software must be made by a qualified health care professional.

5. Oracle Software.

a. Waters has provided, as part of the Software, access to certain Oracle embedded software as a convenience. To the extent that the Software contains Oracle software, you acknowledge that Oracle has no express or implied obligation to provide any technical or other support to you for such software. Please contact Waters directly for technical support and customer service related to the Oracle software.

b. Oracle may provide to its own customers, who may include you, as part of an Oracle software package source code identical to the Oracle source code embedded in the Software. Regardless of whether Oracle does do so, the Oracle source code embedded in the Software shall be governed solely by the terms of this Agreement. If you have obtained an Oracle software license, you must not attempt to use the Oracle software to access, use, reproduce, modify reverse, engineer or otherwise tamper with the Software.

c. Third party technology that is appropriate or necessary for use with some Oracle software, if any, is specified in the Software

documentation or otherwise by Waters and such third party technology is licensed to you only for use with the Software under the terms of the third party license agreement specified in the Software documentation or otherwise by Waters and not under the terms of this Agreement.

d. Oracle is a third party beneficiary of the rights and obligations of this Agreement.

6. Exclusion of the Uniform Computer Information Transactions Act ("UCITA").

It is understood and agreed that the provisions of the UCITA do not apply to this Agreement and the license contained herein.

7. Warranties; Disclaimers.

a. **Representations and Warranties.** Each party to this Agreement hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; and (ii) that the first installation or use of the Software in the designated operating environment constitutes a valid and binding obligation between you and Waters and will be

enforceable against you in accordance with the terms of this Agreement.

b. <u>Waters Limited Warranty</u>.

i.Waters warrants for a period of ninety (90) days from the date of shipment (the "Warranty Period") that the Software will, when used in the designated operating environment, perform substantially in accordance with the operating specifications set forth in the user manual as amended by any release notes issued during the Warranty Period and that the Software will be free of defects in materials and workmanship (the "Limited Warranty"). The Limited Warranty shall apply only to the most current version of the Software that was supplied to you by Waters.

ii.The Limited Warranty is subject to the conditions set forth below:

(a.) You must give written notice to Waters during the Warranty Period with an explanation of the circumstances of any claim that the Software fails to conform to this Limited Warranty.

(b.) Your sole and exclusive remedy in the event of any such failure is expressly limited to the correction or replacement of the defective Software or the refund of the fees paid for the defective Software.

(c.) The Limited Warranty shall not apply to any Software delivered to you that has been improperly installed or modified or that has been the subject of neglect, misuse, abuse, misapplication or alteration.

(d.) No representative of Waters is authorized to commit Waters to any warranty other than the Limited Warranty contained herein.

c. **Disclaimer.** SUBJECT TO THE LIMITED WARRANTY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WATERS AND ORACLE DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE SOFTWARE, DOCUMENTATION AND ANY OTHER INFORMATION OR MATERIALS OTHERWISE PROVIDED ARE PROVIDED "AS IS" AND ARE SUBJECT TO NO OTHER WARRANTY. NO WARRANTY IS MADE BY WATERS AND/OR ORACLE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. NEITHER WATERS NOR ORACLE WARRANTS THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE,

OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT WATERS' AND/OR ORACLE'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR YOUR BENEFIT ONLY.

d. **Exclusions of Remedies; Limitation of Liability.** OTHER THAN AS SET OUT IN SECTION 7.b ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WATERS AND/OR ORACLE BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF WATERS AND/OR ORACLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE

BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ORACLE SHALL NOT BE LIABLE TO YOU FOR ANY OTHER DAMAGES, INCLUDING DIRECT DAMAGES. THE CUMULATIVE LIABILITY OF WATERS TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION ARISING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES, IF ANY, THEN PAID TO WATERS BY YOU DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVED INEFFECTIVE.

e. **Essential Basis.** The parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitation of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. **Term and Termination**.

a. **Term.** This Agreement shall remain in effect for as long as you are not in violation of any material provision contained in this Agreement (the "Term"). A substantial deviation of Waters' hardware from the specifications in the corresponding documentation will not be considered a breach that allows you to terminate this Agreement.

b. **Rights to Terminate.**

i. Each party has the right to terminate this Agreement, by giving written notice of termination to the other party, if: (a) the other party breaches this Agreement and (b) either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching

party within fifteen (15) days after receiving written notice of the breach from the non-breaching party; provided, however, in the event of a breach by you, at the discretion of Waters, this Agreement may be immediately revoked and terminated. In such event, Waters' shall have the following rights: (x) the right of termination as set forth above; (y) the right to obtain an injunction to enjoin your continued or repeated breaches; and (z) the right to all costs incurred by Waters as a result of the breach, including reasonable attorney's fees and costs.

ii. You may terminate this Agreement at any time by giving written notice of termination to Waters.

c. **Consequences of Termination**. When this Agreement expires or is terminated:

i.You must (a) immediately cease all use of the Software, (b) promptly return to Waters or destroy all copies of the Software in your possession or control and (c) certify in writing to Waters that you have complied with Sections (a) and (b).

ii. You will l remain obligated to pay any amounts you owe to Waters at that time.

9. Export Control.

a. The Software is subject to export controls under the U.S. Export Administration Regulations. Therefore, the Software may not be exported or re-exported to entities within, or residents or citizens of, embargoed countries or countries subject to applicable trade sanctions, nor to prohibited or denied persons or entities without proper government licenses. Information about such restrictions can be found at the following websites: http://www.treas.gov/ofac/ and www.bis.doc.gov/complianceandenforcement/Liststocheck.htm. Countries embargoed by the U.S. include Cuba, Iran, North Korea, Sudan and Syria. You are responsible for any violation of the U.S. export control laws related to the Software. By accepting this Agreement, you confirm that you are not a resident or citizen of any country currently embargoed by the U.S. and that you are not otherwise prohibited from receiving the Software.

b. If you are a branch of the United States government, you shall have "restricted rights" to use, duplicate, or disclose the Software as set forth in subdivision (c)(1)(ii) of Rights in Technical Data and Computer Software Federal Acquisition Regulations in Technical Data and Computer Software Federal Acquisition Regulations Supplement (DFARS) 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227_19.

10. Audit Rights.

You shall maintain accurate records as to your use of the Software as authorized by this Agreement. During the Term hereof, Waters, or persons designated by Waters, will, at any time, be entitled to inspect such records and your computers, in order to verify that the Software is being used by you in accordance with the terms of this Agreement, provided that Waters may conduct no more than one (1) audit in any twelve (12) month period. Any such audit will be performed at Waters' expense during normal business hours, provided that you shall promptly

reimburse Waters for the cost of such audit if such audit reveals that your use of the Software is not as authorized by this Agreement.

11. Transfer.

This Agreement shall be assignable by Waters. It shall not be assignable by you without the prior written consent of Waters.

12. Dispute Resolution.

a. All disputes arising in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "Rules") by one or more arbitrators appointed in accordance with the Rules.

b. Notwithstanding the provisions of Section 12.a above, either party hereto shall be entitled to seek equitable relief against the other party in any competent court having jurisdiction over the parties without first submitting the matter to arbitration with respect to alleged breaches or threatened breaches of any material term or provision of this Agreement. The parties hereby irrevocably submit to the jurisdiction of any of said courts in any such claims and waive any claim or defense of inconvenient forum or lack of personal jurisdiction under any applicable law, decision, treaty or otherwise. In making the foregoing submission to jurisdiction, each party

expressly waives the benefit of any contrary provision of the laws of the jurisdiction of its incorporation or where it is doing business. Both parties represent and warrant that they are not immune from judicial proceeding and will not claim immunity for themselves or their property in any claims that may arise hereunder. The parties further agree that service of process or notice in any such action, suit or proceeding shall be effective if delivered in the same manner as the Quotation and PO. You acknowledge that the breach of the terms or conditions of this Agreement by you, including any unauthorized use, reproduction or transfer of the Software, may substantially diminish the value of the Software and irrevocably harm Waters.

13. Entire Agreement.

This Agreement sets forth the entire understanding and agreement between you and Waters and may be amended only in writing signed by both parties. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE

THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

14. Waiver.

No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

15. Severability.

If any provision of this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

16. Relationship of the Parties; No Agency.

Nothing contained herein shall be construed to place Waters and you in a relationship of partners, joint ventures, principal agent or employer employee, and neither party shall have any authority to obligate or bind the other

whatsoever, except as specifically provided by the terms of this Agreement. In no event shall either party hold itself out to be an agent of the other with the authority to bind such other party to any agreement, contract or obligation.

17. Force Majeure.

Waters shall have no liability for failure to perform, or delay in performance, in the delivery of any and all Software caused by circumstances beyond Waters' reasonable control, including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances.